

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WORLDWIDE EQUIPMENT, INC.	:	CASE NO. C-1-01-747 (Judge Beckwith)
Plaintiff/Counterclaim	:	
Defendant	:	
v	:	
MILLER INDUSTRIES, INC.	:	
Defendant/Counterclaim	:	
Plaintiff	:	
WORLDWIDE EQUIPMENT, INC.	:	<u>ANSWER OF FONTAINE</u> <u>MODIFICATION COMPANY</u> <u>TO THIRD PARTY COMPLAINT</u> <u>OF COUNTERCLAIM</u> <u>DEFENDANT WORLDWIDE</u> <u>EQUIPMENT, INC.</u>
Counterclaim Defendant/ Third Party Plaintiff	:	
v	:	
FONTAINE MODIFICATION CO.	:	
Third Party Defendant	:	

FIRST DEFENSE

1. This third party defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 in the Third Party Complaint.

2. This third party defendant admits paragraphs 2 and 3 in the Third Party Complaint.
3. This third party defendant denies paragraphs 15 and 17 in the Third Party Complaint.

SECOND DEFENSE

4. All equipment sold to or delivered to Fontaine by Worldwide Equipment, Inc. or Miller Industries, Inc. was paid for by Fontaine, with payment made to either Worldwide Equipment, Inc. or Miller Industries, Inc.
5. Documentation of deliveries and payments will be provided to the parties and the Court.

THIRD DEFENSE

6. The claims of third party plaintiff are barred by want of consideration and failure of consideration.

FOURTH DEFENSE

7. Payment was made to the apparent agent of Worldwide Equipment, Inc. for all material delivered to Fontaine or sold to Fontaine.

FIFTH DEFENSE

8. The claims of the third party plaintiff are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, and accord and satisfaction.
9. The claims of the third party plaintiff are barred, in whole or in part, by the failure of conditions precedent.
10. The claims of the third party plaintiff are barred by its own fraud, misrepresentation, bad faith and/or unclean hands.
11. The third party plaintiff failed to mitigate and minimize some or all of its damages, if any such damages exist.

SIXTH DEFENSE

12. Third party defendant acted at all times with good cause and in good faith.

/s/ Gordon D. Arnold

Gordon D. Arnold #0012195
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Attorney for Third Party Defendant,
Fontaine Modification Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon Peter J. Stautberg, Attorney for Worldwide Equipment, Inc., 1400 Provident Tower, One East Fourth Street, Cincinnati, OH 45202; and W. Breck Weigel, Attorney for Miller Industries, Inc., Suite 2100 Atrium Two, 221 East Fourth Street, Cincinnati, OH 45202, this 21st day of October, 2003, by ordinary mail.

/s/ Gordon D. Arnold

Gordon D. Arnold